



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2023-0199]

RIN 1625-AA00

Safety Zone: Tall Ships America; Galveston, TX

AGENCY: Coast Guard, Department of Homeland Security (DHS).

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary moving safety zone on the waters of the Gulf of Mexico off the coast of Galveston, around a Tall Ships America Parade of Sail in Galveston, Texas. Once the vessels are moored at the Galveston Historic Seaport, a temporary fixed safety zone will be established. The safety zones are necessary to protect the public and wooden sailing vessels and their crews from the hazards associated with transiting the area. Persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the moving and fixed safety zones unless authorized by the Captain of the Port Houston-Galveston or a designated representative.

DATES: This rule will be effective from 11 a.m. April 13, 2023, through 6 p.m. on April 16, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2023-0199 in the search box and click "Search." Next, in the Document Type column, select "Supporting & Related Material."

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Marine Science Technician First Class Christopher C Morgan, Sector

Houston-Galveston Waterway Management Division, Coast Guard; Telephone (713)

398-5823, E-mail Christopher.C.Morgan@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<i>Federal Register</i>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. The Coast Guard received all amplifying information for this Tall Ships event regarding the need for a safety zone on March 6, 2023. Insufficient time remains to publish a NPRM and to receive public comments, as the event will occur on April 13, 2023, before the rulemaking process would be completed. Because of the potential safety hazards associated with the Parade of Sail, the regulation is necessary to provide for the safety of the Tall Ships and their crew, spectators, and other vessels navigating the surrounding waterways. For those reasons, it would be impracticable to publish an NPRM.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

For the reasons discussed above, the Coast Guard finds that good cause exists.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port Houston-Galveston has determined that potential hazards associated with the Parade of Sail, will be a safety concern for the Tall Ships and their crews, spectators, and vessels. This rule is needed to ensure the safety of life for vessels and persons within the navigable waters of the safety zone during the Parade of Sail in Galveston, Texas.

IV. Discussion of the Rule

This rule establishes a temporary moving safety zone extending 100 yards from the wooden sailing vessels participating in the Tall Ships America Parade from 11 a.m. through 4 p.m. on April 13, 2023, starting in approximate position 29° 19.181'N 094° 43.165'W to the turn around point at 29° 16.6'N 094° 48.5'W, then proceeding through the Houston Ship Channel and Galveston Ship Channel to their assigned docking stations in the vicinity of the Galveston Historic Seaport. Once vessels are moored at the Galveston Historic Seaport in Galveston, TX, the temporary fixed safety zone will be in effect from 2 p.m. on April 13, 2023, through 6 p.m. on April 16, 2023, and extend 25 yards from the vessels. The temporary safety zones will cover all navigable waters within a specified area of the Gulf of Mexico and the Port of Galveston. The duration of the zones are intended to ensure the safety of the public and these navigable waters during the Tall Ships America Parade of Sail and while the vessels are moored. No vessel or person will be permitted to enter, transit through, anchor in, or remain within the safety zones without obtaining permission from the Captain of the Port Houston-Galveston or a designated representative.

Persons and vessels may request authorization to enter, transit through, anchor in, or remain within the regulated area by contacting the Captain of the Port Houston-Galveston by telephone at (713) 398-5823, or a designated representative via VHF radio

on channel 16. If authorization to enter, transit through, anchor in, or remain within the regulated area is granted by the Captain of the Port Houston-Galveston or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Houston-Galveston or a designated representative. The Coast Guard will provide notice of the safety zones by Local Notice to Mariners, Broadcast Notice to Mariners, and/or on-scene designated representatives.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on: (1) The safety zones will be enforced for a limited period of time over the course of four days during the Tall Ships America Parade of Sail and touring times at the pier; (2) although persons and vessels are prohibited to enter, transit through, anchor in, or remain within the regulated area without authorization from the Captain of the Port Houston-Galveston or a designated representative, they may operate in the surrounding area during the enforcement period; and (3) the Coast Guard will provide advance notification of the safety zones to the local maritime community by Local Notice to Mariners and/or Broadcast Notice to Mariners.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires

Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone that will prohibit persons and vessels from entering, transiting through,

anchoring in, or remaining within the regulated area during a four day visit of the Tall Ships. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051, 70124; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

2. Add § 165.T08-0199 to read as follows:

§ 165.T08-0199 Safety Zone; Tall Ships America, Galveston, TX.

- (a) Regulated area. The following areas are temporary safety zones:

- (1) All waters of the Gulf of Mexico within 100 yards of the Tall Ships America Parade of Sail transiting from approximate coordinates, 29° 19.181'N 094° 43.165'W, to the turn around point located at 29° 16.6'N 094° 48.5'W, then to the mooring location at the Galveston Historic Seaport in Galveston, TX.

(2) While the vessels are moored a temporary fixed safety extending 25 yards from the vessels will be in effect for the duration of the event.

(b) Definition. The term *designated representative* means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port Houston-Galveston in the enforcement of the regulated areas.

(c) Regulations. (1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by the Captain of the Port Houston-Galveston or a designated representative.

(2) Designated representatives may control vessel traffic throughout the enforcement area as determined by the prevailing conditions.

(3) Persons and vessels may request authorization to enter, transit through, anchor in, or remain within the regulated areas by contacting the Captain of the Port Houston-Galveston by telephone at (713) 398-5823, or a designated representative via VHF radio on channel 16. If authorization is granted by the Captain of the Port Houston-Galveston or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Houston-Galveston or a designated representative.

(d) Enforcement period. This section will be enforced from 11 a.m. on April 13, 2023, until 6 p.m. on April 16, 2023.

Dated: March 28, 2023.

Jason E. Smith,
Captain, U.S. Coast Guard,
Captain of the Port Houston-Galveston.

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